

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JUAN HERRERA, et al.,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

CASE NO. 09cv0756 JM(WMc)

ORDER DENYING JOINT MOTION  
FOR STAY OF PROCEEDINGS

On or about February 12, 2010, the parties submitted a joint motion to stay these proceedings pending resolution of criminal proceedings against a potential fact witness, Daniel Lopez. Mr. Lopez is presently incarcerated at Kern Valley State Prison, following a conviction for second degree murder for his role as the load driver in the collision that injured Plaintiffs and killed two passengers in the load vehicle. Plaintiffs represent that Mr. Lopez may possess relevant evidence concerning the cause of the vehicle accident.

The parties jointly request a stay of the proceedings because counsel for Mr. Lopez has informed the parties herein that Mr. Lopez would invoke his Fifth Amendment privilege against self-incrimination and decline to provide deposition testimony for use at trial. Mr. Lopez continues to pursue state law appellate remedies. Counsel for Mr. Lopez purports to represent, in an unauthenticated letter, "I have advised him to invoke his Fifth Amendment privilege against self-incrimination should you attempt to depose him prior to the finality of his appeal in case number D053543." (Motion Exh. A). Other than the letter, there is no evidence that Mr. Lopez will ever

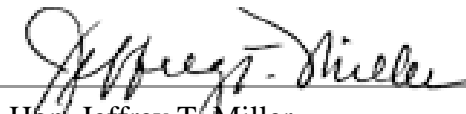
1 provide testimony.

2 The court denies the joint motion for a stay. A stay is an extraordinary remedy reserved for  
 3 “really extraordinary causes.” Cheney v. United States Dist. Ct. For D.C., 542 U.S. 367, 380 (2004).  
 4 Here, the parties identify that Mr. Lopez may provide relevant testimony. However, there is no  
 5 evidence in the record that Mr. Lopez is likely to ever provide testimony. The underlying assumption  
 6 of the parties’ joint motion is that Mr. Lopez will provide testimony upon finalizing Mr. Lopez’s  
 7 appeal pending before the California Court of Appeal, anticipated by April 2010. (Motion at p.3).  
 8 However, if finality is the yardstick, the court notes that finality may indeed be years away with  
 9 respect to Mr. Lopez’s criminal appeals. Upon exhaustion of his appeal before the California Court  
 10 of Appeal, Mr. Lopez may then seek review before the California Supreme court and then proceed  
 11 with collateral proceedings, state habeas corpus proceedings followed by federal habeas corpus  
 12 proceedings. This process routinely takes several years - during which time memories of presently  
 13 identified and available percipient witnesses may fade. In light of the present record, the court  
 14 concludes that the parties fail to make a sufficient evidentiary showing for the imposition of a stay.

15  
 16 In sum, the joint motion for a stay of proceedings is denied. (Docket No. 22). The court also  
 17 vacates the pretrial and trial dates set forth in the November 3, 2009 Amended Case Management  
 18 Order and instructs the parties to contact the chambers of Magistrate Judge McCurine to reschedule  
 19 all pretrial and trial dates. The court anticipates that this case proceed to trial by the end of 2010.

20 **IT IS SO ORDERED.**

21 DATED: February 18, 2010

22   
 23 Hon. Jeffrey T. Miller  
 United States District Judge

24 cc: All parties